

**Letter of Findings Number: 04-20110049P
Negligence Penalties
For Tax Years 2007-09**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Negligence Penalties.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalties.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation with operations in Indiana. The Indiana Department of Revenue ("Department") issued proposed assessments for sales tax, ten percent negligence penalties, and interest for the tax years 2007, 2008, and 2009. Taxpayer protests the imposition of negligence penalties. An administrative hearing was conducted via telephone and this Letter of Findings results. Further facts will be presented as required.

I. Tax Administration–Negligence Penalties.

DISCUSSION

The Department issued proposed assessments for sales tax, interest, and the ten percent negligence penalties for each tax year in question. Taxpayer protests the imposition of penalties and requests a waiver of those penalties. Taxpayer states that it had significant personnel turnover during the tax periods at issue and that several of the responsible employees were fired as a result of the errors which led to the proposed assessments in this audit. Also, Taxpayer states that it has an excellent record of tax compliance with Indiana prior to and subsequent to this audit period. Taxpayer believes that these factors establish grounds for waiver of the ten percent penalties.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant part:

If a person:

...

(4) fails to timely remit any tax held in trust for the state;

...

the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred deficiencies which the Department determined were due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to penalties under IC § 6-8.1-10-2.1(a)(4). After review of the documentation and analysis provided in the protest process, Taxpayer has affirmatively established that its failure to pay the deficiencies was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

Posted: 09/28/2011 by Legislative Services Agency
An [html](#) version of this document.